IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.489 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
B.C.C.C. SHORT CAUSE SUIT NO.1398 OF 2006
WITH
CIVIL APPLICATION NO.607 OF 2006

Narang Overseas Pvt.Ltd. ...Appellant

Versus

Mar Enterprises & Ors. ...Respondents

.....

Mr.C.U.Singh with Mr.S.N.Trivedi i/b Mr.Kishore D. Abhichandani for Appellant.

Mr.Rajiv Narula i/b Jhangiani Narula & Associates for Respondent No.1.

None for Respondent No.2.

Ms.Sowmya Srikrishnan i/b Crawford Bayley & Co. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

JULY 14, 2006.

P.C.

1. Heard Counsel for the parties. Admit.

Mr.Narula waives notice for Respondent No.1.

Ms.Srikrishnan waives notice for Respondent No.3.

None appears for Respondent No.2. Respondent No.2 is not a necessary party for the purpose of deciding the issue that arises in the present appeal.

2. As short question is involved, Appeal is taken up for hearing forthwith, by consent.

3. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court dated May 6, 2006 in Notice of Motion No.Nil in S.C.Suit No.1398 of 2006. By this order, relief in terms of prayer clauses (a) and (b) of the Notice of Motion has been granted by the Trial Court in favour of Respondent No.1/Plaintiff. The same reads thus :

> "(a) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendants No.1 & 2 by themselves, their servants, agents and representatives from obstructing, interfering with, preventing the officers and workmen of Defendant No.3 from coming upon the compound of Beach View CHS Ltd., situated at 93, Bhulabhai Desai Road, Bombay 400026 and install the electric meter and restore electric connection to Flat No.5 situated therein on the 2nd

floor;

(b) that pending the hearing and final disposal an Order and direction be given to the Sr.Inspector of Police of the Nana Chowk Police Station to provide police protection and assistance to the Plaintiff in implementing the orders of the Court."

4. In the present Appeal, the grievance of the Appellant is that the Trial Court has disposed of the issue in a cryptic manner. The first question that ought to have been answered by the Trial Court on analysis of pleadings and documents on record as to what is the status of the Plaintiff - whether as owner or occupier. It is only if it is found that the Plaintiff was owner or occupier that the Plaintiff would be entitled to pursue the claim of installation of electric meter and restoration of electric connection to the premises in question.

5. The Court below indeed has referred to the stand of the Plaintiff to be occupier. However, the Court has not returned a clear finding of fact that the Plaintiff was occupier in respect of the suit flat. In absence of such finding, the relief

which has been granted, cannot be sustained. The relief can be granted only on the finding that the Plaintiff was in fact occupier of the disputed premises.

6. The only course open for this Court is to relegate the parties before the Trial Court for reconsideration of the Notice of Motion afresh, on its own merits in accordance with law. The Trial Court will decide the relevant issues having regard to the pleadings and documents on record or further affidavits or documents to be filed by the parties, subject to the permission to be granted by the Trial Court in that behalf.

7. The impugned order is accordingly set-aside with the above observations. The Notice of Motion is restored to the file of the Trial Court, to its original number, to be decided on its own merits in accordance with law.

8. The Trial Court shall dispose of the Notice of Motion as expeditiously as possible, preferably by 11th August 2006.

9. Parties to appear before the Trial Court on 20th July 2006, on which date, the Trial Court shall assign date of hearing of the Notice of Motion or proceed to hear the Motion on the same day as may be advised, so as to ensure that the Notice of Motion is disposed of by 11th August 2006. Parties shall exchange pleadings on or before 28th July 2006 which will be filed in the Registry of the Trial Court, if so advised.

10. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.